

89-891

FILED

DEC 2 1989

JOSEPH F. SPANIOLO, JR.  
CLERK

No.

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IN THE  
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1989

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ROBERTO CAMPOS,

Petitioner,

vs.

PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

---

PETITION FOR WRIT OF CERTIORARI TO THE  
APPELLATE COURT OF ILLINOIS,  
SECOND JUDICIAL DISTRICT

---

JULIUS LUCIUS ECHELES  
205 W. Wacker Drive  
Chicago, Illinois 60606  
(312) 782-0711  
Attorney for Petitioner

---

22174



**QUESTION PRESENTED**

1. Whether the maximum sentence imposed upon petitioner violates the Eighth Amendment proscription against cruel and unusual punishment, where the record reflects the sentencing court disregarded factors in mitigation and petitioner's rehabilitation potential.



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Reasons for Granting the Writ:	
The maximum sentence imposed upon petitioner violates the Eighth Amendment proscription against cruel and unusual punishment, where the record reflects the sentencing court disregarded factors in mitigation and petitioner's rehabilitative potential.	
Certiorari should be allowed to vindicate defendant's federally guaranteed proscription against cruel and unusual punishment.	6

# THE FUTURE OF THE NATION

by J. M. G. [illegible]

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3 - Order denying petition for  
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Sup. Ct. Rule 20.1 2

Sup. Ct. Rule 20.4 2

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County of [illegible]  
[illegible] [illegible] [illegible]  
[illegible] [illegible] [illegible]

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**IN THE  
SUPREME COURT OF THE UNITED STATES**

**OCTOBER TERM, 1989**

---

---

**ROBERTO CAMPOS,**

Petitioner,

vs.

**PEOPLE OF THE STATE OF ILLINOIS,**

Respondent.

---

**PETITION FOR WRIT OF CERTIORARI TO THE  
APPELLATE COURT OF ILLINOIS,  
SECOND JUDICIAL DISTRICT**

---

Petitioner, Roberto Campos, prays that a writ of certiorari issue to review the opinion and judgment of the Appellate Court of Illinois, Second Judicial District, affirming his convictions for aggravated criminal sexual assault and aggravated criminal sexual abuse, and maximum sentence of 30 years.

maximum sentence of 30 years.

aggravated criminal sexual abuse, 30

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### Judgment and Opinion Below

The Order of the Appellate Court of Illinois, Second Judicial District, No. 2-88-0494 (not published), is set out as Appendix B.

### Jurisdictional Statement

On April 25, 1989, the Appellate Court of Illinois, Second Judicial District, filed its Order. (App. B) Defendant's timely Petition for Leave to Appeal to the Supreme Court of Illinois was denied on October 5, 1989. (App. C)

This Petition to review the judgment of a state court of last resort is timely filed within 60 days after denial of Petition for Leave to Appeal.

Jurisdiction is invoked under 28 U.S.C. Sec. 1257(3) and Rules 20.1 and 20.4 of this Court.

INDEPENDENT AND UNBIASED

THE COURT OF THE UNITED STATES  
IN THE DISTRICT OF COLUMBIA  
IN THE MATTER OF THE ESTATE OF  
JAMES M. SMITH, DECEASED  
ADMINISTRATOR

THE COURT OF THE UNITED STATES  
IN THE DISTRICT OF COLUMBIA  
IN THE MATTER OF THE ESTATE OF  
JAMES M. SMITH, DECEASED  
ADMINISTRATOR  
VS.  
THE DISTRICT OF COLUMBIA  
OFFICE OF THE ATTORNEY GENERAL  
PLAINTIFFS  
VS.  
THE DISTRICT OF COLUMBIA  
OFFICE OF THE ATTORNEY GENERAL  
DEFENDANTS

THIS PETITION IS FILED FOR THE  
RECORD OF A STATE COURT OF LAST RESORT  
FILED WITHIN 60 DAYS AFTER ENTRY OF  
DECISION FOR CANCEL AND APPEAL.  
JURISDICTION IS INVOKED UNDER 18 U.S.C.  
SEC. 1357(3) AND RULES 10.1 AND 10.2 OF  
THIS COURT.

## **Constitutional Provisions Involved**

The Eighth Amendment to the United States Constitution provides:

"Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

## **Statement of the Case**

### **Nature of the Case**

Petitioner was found guilty of one count of aggravated criminal sexual assault and two counts of aggravated criminal sexual abuse (Ill.Rev.Stat., ch. 38, pars. 12-14(b)(1), 12-16(c)(1)), and sentenced to a 60-year extended term sentence. On first appeal, that sentence was held unauthorized, and was vacated. People v. Campos, 155 Ill.App.3d 348, 507 N.E.2d 1342 (2 Dist. 1987). Upon remand, a maximum sentence of 30 years was imposed, and upheld on appeal.

violates the Eighth Amendment

Constitutional Convention

The State of New York

1894-95

Report of the

Committee on

the

Constitution

and

the

Constitution

of

the

State

of

New

York

1894-95

Report

of

the

Committee

on



### Statement of Facts

Petitioner was convicted of one count of aggravated criminal sexual assault and two counts of aggravated criminal sexual abuse, upon testimony that petitioner performed anal intercourse and fondled a minor. (R. 350, 469, 642) Defendant was sentenced to a 60-year extended term sentence. (R. 768) On first appeal, that sentence was held unauthorized as a double enhancement, since the degree of offense was enhanced for acts upon a minor under 12 years of age (and sentence could not also be extended therefor).

People v. Campos, 155 Ill.App.3d 348, 507 N.E.2d 1342 (2 Dist. 1987). Upon remand, a maximum sentence of 30 years was imposed, and upheld on appeal.

Petitioner contends this maximum sentence violates the Eighth Amendment

BY

ATTORNEY

Order of the Court of Appeals  
Illinois State Bar Association

1989

ILLINOIS STATE BAR ASSOCIATION

1111 N. WABASH AVE., CHICAGO, ILL. 60602

TELEPHONE (312) 467-1000

FAX (312) 467-1001

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proscription against cruel and unusual punishment where the record reflects the sentencing court disregarded factors in mitigation and petitioner's rehabilitative potential.

### **Raising the Federal Question Below**

At all times below, before the Appellate Court of Illinois, and the Supreme Court of Illinois, petitioner challenged the cruelly excessive and unusual nature of the maximum sentence imposed. (U.S. Constitution, Amend. 8)



## REASONS FOR GRANTING THE WRIT

---

The maximum sentence imposed upon petitioner violates the Eighth Amendment proscription against cruel and unusual punishment, where the record reflects the sentencing court disregarded factors in mitigation and petitioner's rehabilitative potential.

The Eighth Amendment protects individuals who have been convicted of crime. Metz v. McKinley, 583 F.Supp. 683 (D.C. Ga. 1984), affirmed 747 F.2d 709 (11 Cir. 1984). Punishment is "cruel and unusual" if it is greatly disproportionate to offense for which it is imposed. Jordan v. Fitzharris, 257 F.Supp. 674 (D.C. Cal. 1966). The Eighth Amendment draws its meaning from the evolving standards of decency which mark the progress of a maturing society. See,

# RESEARCH FOR CONSERVATION

The National Science Foundation

Department of the Interior

Washington, D. C. 20540

Office of Biological Services

Washington, D. C. 20540

Attention: Mr. J. W. Smith

Enclosed for your information

are two copies of a report

dated May 1964, by the

U.S. Fish and Wildlife Service

U.S. Fish and Wildlife Service

U.S. Fish and Wildlife Service

U.S. Fish and Wildlife Service

U.S. Fish and Wildlife Service

U.S. Fish and Wildlife Service

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U.S. Fish and Wildlife Service

Gardner v. Florida, 430 U.S. 349, 51 L.Ed.2d 393 (1977). The ban on inflicting cruel and unusual punishment prohibits penalties that are grossly disproportionate to the offense, and to the severity of the crime. Hutto v. Finley, 437 U.S. 678, 57 L.Ed.2d 522 (1978); Estelle v. Gamble, 429 U.S. 97, 50 L.Ed.2d 251 (1976).

At bar, petitioner was sentenced to 30 years in prison, the maximum sentence under law. (R. - 4/25/88 - 18.) Defendant is not eligible for release until the next century.

The sentencing court, in imposing the maximum sentence, disregarded any factor in mitigation, and petitioner's rehabilitative potential. Petitioner's father was an alcoholic, who sexually abused petitioner as a child. (C. 218)

Section 10, Article 10, 1933 Code

Section 10, Article 10, 1933 Code

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Section 10, Article 10, 1933 Code



Petitioner had sought psychiatric guidance since his teenage years. (C. 218) Petitioner has a history of psychiatric hospitalizations. (C. 218-19) Petitioner hears voices. (C. 218-19)

The trial court, in imposing a maximum sentence, violated the Eighth Amendment proscription against cruel and unusual punishment. The sentence should be vacated, and the cause remanded for imposition of a lesser sentence.

Testimony and other evidence.

Witnesses also are required to

18) Testimony and other evidence.

19) Testimony and other evidence.

20) Testimony and other evidence.

21)

The first part of the testimony

and other evidence, and the

second part of the testimony

and other evidence. The testimony

and other evidence, and the

testimony of a witness.

**CONCLUSION**

For the foregoing reasons, certiorari should be allowed. And, on the merits, petitioner's sentence should be vacated, and the cause remanded for imposition of a lesser sentence.

Respectfully submitted,

JULIUS LUCIUS ECHELES  
205 W. Wacker Drive  
Chicago, Illinois 60606  
(312) 782-0711  
Attorney for Petitioner

# CONCLUSION

For the foregoing reasons, the Court should be allowed to affirm the decision of the majority of the Court and the cause reversed for the reasons stated in the dissenting opinion.

Very respectfully,  
JAMES H. HARRIS  
Attorney General  
State of Texas  
Austin, Texas  
February 10, 1911

## APPENDICES



App. 1

APPENDIX A

---

First Opinion of the Appellate Court  
of Illinois, Second Judicial  
District

No. 2-85-0801 - Filed May 6, 1987

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Citation: 155 Ill.App.3d 348,  
507 N.E.2d 1342

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App. 2

APPENDIX B

Second Opinion of the Appellate Court  
of Illinois, Second Judicial  
District

No. 2-88-0494 - Order Filed  
April 25, 1989

This Order Is Not Precedential  
And Not To Be Published

FILED

APR 25 1989

LOREN J. STROTZ, CLERK  
APPELLATE COURT, 2ND DISTRICT

No. 2-88-0494

---

IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

---

PEOPLE OF THE STATE	)	Appeal from the
OF ILLINOIS,	)	Circuit Court of
Plaintiff-Appellee,	)	Lake County.
	)	
v.	)	No. 85 CF 161
	)	
ROBERTO CAMPOS,	)	The Honorable
Defendant-Appellant.	)	Harry D. Hartel,
	)	Jr., Judge,
	)	Presiding.

---

Defendant, Roberto Campos, was found  
guilty of one count of aggravated

Page 2

Exhibit A

Exhibit A consists of a copy of the letterhead memorandum dated and captioned as above, and a copy of the letterhead memorandum dated and captioned as above, both of which are herewith submitted for your information.

This letterhead memorandum is being submitted to you for your information and for your review and comment.

Very respectfully,  
[Signature]

[Signature]

11-11-54

APPROVED AND FORWARDED:  
[Signature]

RECEIVED BY THE  
OFFICE OF THE  
SPECIAL AGENT

ROBERTO CANO  
Defendant-Accused

Defendant, Roberto Cano, was found

guilty of one count of aggravated

App. 3

criminal sexual assault and two counts of aggravated criminal sexual abuse following a bench trial in the circuit court of Lake County. He was sentenced to a 60-year extended term of imprisonment for aggravated criminal sexual assault. Defendant appealed from this conviction. This court affirmed the finding of guilt, vacated the sentence, and remanded for resentencing. (People v. Campos (1987), 155 Ill. App. 3d 348, 363, 507 N.E.2d 1342, 1352.) On remand, defendant was sentenced to a 30-year nonextended term of imprisonment for aggravated criminal sexual assault. The instant appeal is from the circuit court's judgment on remand.



App. 4

Defendant raises three issues, contending that (1) his conviction should be reversed because he was not proven guilty beyond a reasonable doubt at his trial, (2) his conviction should be reversed because the aggravated criminal sexual assault and aggravated criminal sexual abuse statutes are unconstitutional, and (3) his sentence should be reduced because the sentence of 30 years' imprisonment is excessive. We affirm.

This court's mandate stated, in pertinent part:

"On the 6th day of May, 1987. [sic] an Opinion of the aforementioned court was entered of record and in accordance with the views expressed into the attached Opinion the judgment of the trial court of conviction is affirmed, the sentence vacated, and cause remanded to the Circuit Court of Lake County for resentencing."



This mandate gave the trial court jurisdiction to do only that which the mandate required (People v. Lowther (1980), 85 Ill. App. 3d 735, 739, 407 N.E.2d 1038, 1041), i.e., to resentence defendant. Thus, the trial court did not have jurisdiction to consider the first two issues raised by defendant and we would have reversed any action of the trial court granting relief on the basis of those issues.

Moreover, "[q]uestions of law decided in a prior appeal of a case are binding on both the trial and appellate courts." (People v. Lynch (1987), 151 Ill. App. 3d 987, 994, 503 N.E.2d 857, 861.) Defendant's first two issues -- whether the evidence was legally sufficient to support his conviction and

sufficient to support his conclusion and whether the evidence was legally

961.) Defendant's brief was answered by 111 App. 3d 967, 968, 969.

country." (People v. Davis, 111 App. 3d 967, 968, 969.)

on both the trial and appellate courts.

in a prior appeal of a conviction for

response, "I believe that the

at that time.

trial court and the appellate court.

which was reversed on appeal.

and the trial court.

these findings were affirmed.

affirmed, and the trial court.

111 App. 3d 967, 968, 969.

111 App. 3d 967, 968, 969.

111 App. 3d 967, 968, 969.

111 App. 3d 967, 968, 969.

111 App. 3d 967, 968, 969.

111 App. 3d 967, 968, 969.



App. 6

whether two statutes are unconstitutional -- are questions of law decided by this court on defendant's prior appeal of this case. (People v. Campos (1987), 155 Ill. App. 3d 348, 356-57, 359-61, 507 N.E.2d 1342, 1347, 1349-50.) This court's decision of these questions of law adversely to defendant's contentions precluded the trial court, and precludes this court, from granting the relief sought on the basis of defendant's first two issues.

Accordingly, we will not consider the merits of the first two issues raised by defendant.

In his argument of the third issue, defendant contends that his sentence should be reduced because the 30-year term of imprisonment imposed is excessive



in failing to take into account his rehabilitative potential. In reviewing this issue, our supreme court's observations in People v. Perruquet remain valid:

"We have frequently stated that the trial judge is normally in a better position to determine the punishment to be imposed than of courts of review. [Citations.] A reasoned judgment as to the proper sentence to be imposed must be based upon the particular circumstances of each individual case. [Citation.] Such a judgment depends upon many factors, including the defendant's credibility, demeanor, general moral character, mentality, social environment, habits, and age. [Citation.] The trial judge, in the course of the trial and the sentencing hearing, has an opportunity to consider these factors which is superior to that afforded by the cold record in this court. (People v. Morgan (1974), 59 Ill. 2d 276, 282[, 319 N.E.2d 764, 768].) We continue to find that the trial court is normally the proper forum in which a suitable sentence is to be determined and the trial judge's

term of imprisonment.



App. 8

decisions in regard to sentencing are entitled to great deference and weight. We therefore reaffirm our long-standing rule that absent an abuse of discretion by the trial court a sentence may not be altered upon review. \*\*\*.

The Illinois Constitution provides that '[a]ll penalties shall be determined both according to the seriousness of the offense and with the objective of restoring the offender to useful citizenship.' (Ill. Const. 1970, art. I, sec. 11.) The purpose of the Unified Code of Corrections include the restoration of offenders to useful citizenship and the prescription of criminal sanctions which recognize the rehabilitative potential of individual offenders. (Ill. Rev. Stat. 1973, ch. 38, par. 1001-1-2.) The trial judge is thus charged with the often difficult and delicate responsibility of fashioning a sentence which will not only protect the interests of society, but will also allow for the possibility of rehabilitation of the offender." (People v. Perruquet (1977), 68 Ill. 2d 149, 154-55, 368 N.E.2d 882, 884.)

The sentencing court at bar did not abuse its discretion when it imposed a 30-year term of imprisonment.

term of imprisonment.

its decision when it imposed a sentence.

The sentencing court at New York found

People v. [redacted] 1971, 32 N.Y.2d 121, 358 N.Y.S.2d 121, 313 N.Y.S.2d 121.

rehabilitation of the defendant.

also allow for the possibility

the interests of justice.

sentence which will be

responsibility of the court.

the court should take into

consideration the defendant's

character and the nature of

the offense.

the court should also take

into account the defendant's

past record.

the court should also take

into account the defendant's

character and the nature of

the offense.

App. 9

The sentencing court stated that it has "read the original presentence investigation, the up-dated presentence investigation, the psychiatric report as to this defendant, and \*\*\* considered the statutory factors in aggravation and mitigation." It is also apparent from the record that the sentencing court had read and was familiar with this court's opinion on the prior appeal. The court was thus aware of the facts of the offense. (People v. Campos (1987), 155 Ill. App. 3d 348, 350-55, 507 N.E.2d 1342, 1343-46.) The court was also aware that defendant was 43 years old at the time of the offense and that defendant had a prior criminal record which included convictions for assorted ordinance and traffic violations, the

ordinance and traffic violations, the  
included convictions for assault  
had a prior criminal record which  
time of the offense and that defendant  
that defendant was 22 years of age  
1943, 1944-45. The court was of the opinion  
111, App. 2d 282, 170-72, 171-72, 173-74  
offense. (People v. [redacted] 1941)  
was then aware of the facts of the  
opinion on the same subject, and it  
road and was traveling at a high rate of  
the record shows the defendant was 22  
Michigan, 1941, 1942, 1943, 1944, 1945,  
investigation, the defendant was found  
has been the original conviction for the  
The defendant's record shows that he



most serious of which was one for driving under the influence of alcohol, and one felony conviction in 1976 for deviate sexual assault. The court also considered the psychiatric report which included the information defendant urges upon us in mitigation: That defendant's father was an alcoholic who had sexually abused defendant; that defendant had sought psychiatric help beginning when he was a teenager and had been in psychiatric hospitals; and that defendant hears voices and has a history of heavy drinking.

None of what the court considered, including the sad history of defendant from the psychiatric report, indicated that defendant was likely to be rehabilitated so as not to commit sex



offenses against children. The sentencing court thus said:

"I think that before me stands a defendant who has been convicted of assaulting children. I think that he has been convicted in the past of an offense involving minor children. I think society and the Court has [sic] an obligation to protect its youngest members, and I think that a sentence of less than the maximum would deprecate from the seriousness of the offense, and I will sentence the defendant to thirty years in the Department of Corrections."

Under the circumstances of the case at bar, the sentencing court did not abuse its discretion in sentencing defendant to a 30-year term of imprisonment.

The judgment of the circuit court is affirmed.

Affirmed.

LINDBERG, J., with DUNN AND McLAREN, JJ., concurring.



— App. 12

**APPENDIX C**

**Order of the Supreme Court of  
Illinois Denying Leave to Appeal**

68638

ILLINOIS SUPREME COURT  
JULEANN HORNYAK, CLERK  
SUPREME COURT BUILDING  
SPRINGFIELD, ILL. 62706  
(217) 782-2035

October 5, 1989

Mr. Julius Lucius Echeles  
Attorney at Law  
205 W. Wacker Dr., S#1515  
Chicago, IL 60606

No. 68638 - People State of Illinois,  
respondent, v. Roberto  
Campos, petitioner. Leave  
to appeal, Appellate Court,  
Second District.

The Supreme Court today DENIED the  
petition for leave to appeal in the above  
entitled cause.

The mandate of this Court will issue  
to the Appellate Court on October 27,  
1989.